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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,468	10/28/2003	Jeffrey Henning	JEV/KAR:0041.0199	6930

152 7590 11/22/2004

CHERNOFF, VILHAUER, MCCLUNG & STENZEL
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PORTLAND, OR 97204-3157

EXAMINER


FOX, CHARLES A

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 11/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/696,468	Applicant(s) HENNING, JEFFREY 	
	Examiner Charles A. Fox	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20031028</u> . | 6) <input type="checkbox"/> Other: _____ |

Specification

The disclosure is objected to because of the following informalities: the first paragraph must be updated to reflect the fact that application 09/952,256 has issued as U.S. patent 6,672,823.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The axis the fork engaging members move relative to is considered by the examiner to be the centerline of element 34(b). This is part of a fixed frame and is not able to shift laterally relative to any of the structure claimed in claims 1 and 6 from which it depends. In the art rejection of claim 7 below the ability to move said axis is taken to be a side shift frame that moves the entire fork shift frame (34) that the applicant has shown to be well known in the art. It must be made clear as to what structure allows this axis to move and what structure it moves relative to. Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by House. In regards to claim 1 House US 5,336,039 discloses a fork positioner comprising:

a first fork engaging member (30) slidably supported by a transversely extending actuator (48);

a second fork engaging member (32) slidably supported by a transversely extending second actuator (48);

said actuators being transversely offset from one another (see figure 5);

said actuation of first actuator causing said second fork engagement member to slide along said second actuator, and said actuation of second actuator causing said first fork engagement member to slide along said first actuator.

Regarding claim 2 House further discloses that the power actuators are hydraulic cylinders.

In regards to claim 6 House also discloses that the first and second actuators are synchronized to symmetrically move the fork engaging members relative to a central axis between the fork engaging members.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over House '039 as applied to claim 6 above, and further in view of House '190. House '039 teaches the limitations of claim 6 as above, he does not teach the axis which said fork engaging members move being shiftable. House US 4,902,190 teaches a forklift carriage comprising:

an actuator (42) for shifting fork engaging members (50,52) relative to an axis along member (34b);

a side shift cylinder (17) that shifts the axis along member (34b) in a transverse direction. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by House '039 with a side shift ability as taught by House '190 in order to allow the device to move the forks to one side at the same time such that the device can access a load that is not exactly lined up with the forks without having the operator manually reposition the forks.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over House '039 as applied to claim 1 above, and further in view of Barda et al. House '039 teaches the limitations of claim 1 as above, he does not teach the fork engaging member as having downwardly depending forks. Barda et al. US 3,754,673 teaches a device for shifting the transverse position of fork on a forklift, said device comprising :

a pair of fork supporting members with a base (92) from which depends a pair of legs (72,74), said legs bracketing a fork (66);

wherein each fork supporting member has a fork-engaging position for preventing the fork from being removed from the device and a fork-disengaging position for allowing the fork (66) to be lifted up and off of said supporting member;

wherein each fork supporting member has a fork-engaging member (94,96) that is selectively movable on the fork positioner from a fork-engaging position to a fork disengaging position.

It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by House '039 with a fork support as taught by Barda et al. in order to allow the forks to be removed from the device without needing any tools or the removal of any parts of the device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 703-605-4294. The examiner can normally be reached between 7:00-5:00 Monday-Thursday.

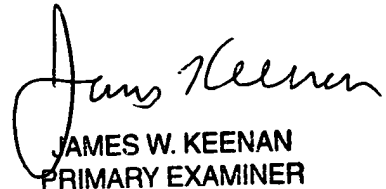
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CAF

CAF 11-9-04


JAMES W. KEENAN
PRIMARY EXAMINER